

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 585 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPORATION

Versus

SUBHAGYACHANDRA G SHAH

Appearance:

MR HS MUNSHAW for Appellant.

MR IS SUPEHIA for Respondent.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/12/96

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. Supehia waives service on behalf of the respondent.

2. At the joint request of learned counsel, this appeal is taken up for final hearing today.

3. As a result of the hearing, it becomes obvious that the impugned order passed below ex.6 suffers from a number of infirmities, the principal one being a total non-application of mind. From a recital of the facts made in the earlier part of the order, it becomes obvious that the trial court has misconstrued the nature and character of the suit as also the relief sought therein, and consequently, has carried a fundamental misconception as regards the nature and character of the interim relief sought in the Notice of Motion. As a result of the hearing, a consensus has been arrived at between the learned counsel for the respective parties, on the basis of which the impugned order is quashed and set aside and the trial court is directed to take up the Notice of Motion for rehearing and disposal according to law. It is expected that the trial court shall give due regard to the pleadings of the parties and also to the various contentions taken by the respective parties, and shall deal with the same by a speaking order which would indicate the reasons behind the same.

4. This appeal is accordingly allowed with no order as to costs.

amp/-